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NEPA Modernization (CE)

Attn: Associate Director for NEPA Oversight

Council on Environmental Quality

722 Jackson Place, NW

Washington, DC 20503

The Northwest Mining Association appreciates the opportunity to provide comments on the Council on Environmental Quality's ("CEQ") proposed guidance "Establishing, Revising and Using Categorical Exclusions under the National Environmental Policy Act."

NWMA is a 111 year old non-profit mining industry trade association based in Spokane, Washington. Today, NWMA has 1,300 members residing in 31 states and 6 Canadian provinces. Our members are actively involved in exploration and mining operations on public lands throughout the United States, especially the western states. Since the enactment of the National Environmental Policy Act (NEPA) in 1970, it has guided the activities of many of our members in conducting mineral exploration and mining activities in the western United States. Our members have extensive first hand experience with NEPA and the permitting process. Our members are significantly impacted by decisions that are the direct results of NEPA, how it is implemented, and the permitting process. Thus, we are significant stakeholders in this process.

Since enactment, our members have seen material changes in the application and interpretation of the law and associated regulations, and at the same time it has become increasingly inconsistent in its implementation. While a NEPA analysis has become "standard operating procedure" for our members it has also become much more cumbersome, time consuming and expensive.

The costs, time delays and unpredictability of the NEPA process significantly impacts our members, especially small and medium sized companies and the Canadian juniors that undertake high risk grassroots exploration and early stage mineral development. They are an important part of the mining industry's food chain and provide the feed stock that will be tomorrow's producing mines operated by larger companies. Something is dreadfully wrong with a process designed to provide a "hard look" at the impacts of major federal actions affecting the human environment, that now takes five, ten and even eighteen years to complete. What NEPA sponsor, Senator Henry Jackson (D-WA), thought would be a 6-8 page document (the EIS) has, with respect to most mining projects, mushroomed to thousands and thousands of pages.

Thus, we applaud CEQ for undertaking a complete review of the NEPA process with the goal of improving implementation. We believe that unambiguous guidance on the use of Categorical Exclusions will go a long way toward streamlining and improving the efficiency of the NEPA process. With that goal in mind, we offer the following specific comments.

Clarify the definition of “Major Federal Action.”

At the current time there is a significant difference of opinion between the various federal agencies and, in fact, between different offices within the same agency, as to what constitutes a major federal action. By establishing clear and concise criteria for what constitutes a major federal action, the process of evaluating environmental impacts and developing mitigation criteria will be improved and streamlined. We believe “major federal action” should be defined to include only new and continuing projects that would require substantial planning, time, resources, or expenditures.

Provide unambiguous guidance and criteria for the use of Categorical Exclusions (CE).

CEQ should clarify and remove uncertainties from the CE process for applicants and federal land managers. We further support, in the strongest possible way, that CE’s be utilized by federal land managers in situations where environmental impacts are temporary, easily mitigated and/or minimal, like most mineral exploration activities. Clear guidance from CEQ would be helpful.

Also, in order to prevent redundant or duplicative NEPA analyses, a non-inclusive list of specific CEs for certain defined activities should be provided. This list should include, for example:

- Existing projects that simply need a permit or authorization renewal;
- Activities that are non-significant and temporary. For example, mineral exploration companies have a strong track record of successfully reclaiming lands to a condition that is equal to or better than before the exploration, development, and/or production activity occurred. In many cases, these kinds of temporary activities could easily be evaluated under a CE;
- Where a project proponent has already completed mitigation or has included sufficient mitigation in the proposed action to avoid significant impacts that would normally require preparation of an EIS or, in some cases, even reduce those impacts below the threshold for preparation of an EA.

Utilize CEs to help prevent redundant or duplicative NEPA analysis and/or documentation.

NWMA supports CEs where their use can help prevent redundant or duplicative NEPA analyses. CEs can reduce agency costs by reducing the documentation requirements for certain well-understood development activities.

Today, a single tract of land can be put through multiple tiers of NEPA review, each requiring months or years to complete. A better system would be to have a Planning Environmental Impact Statement on the front end, which creates Categorical Exclusions (CEs) for certain, defined activities. A non-exclusive list of specific CEs for certain defined activities in all planning documents should be provided. *(See the discussion above for the sorts of activities we believe are*

appropriate for inclusion.). Only projects that do not fit those criteria should be forced to be put through a project-specific EA or EIS.

Further, the federal NEPA review should be considered a complete, cooperative venture so that further review under state or local NEPA processes are not required or applicable to a federally-regulated project covered under federal NEPA review.

Increase the use of programmatic documentation to decrease the need for EISs and EAs.

Too often, federal agencies become overwhelmed by the volume of NEPA activity at the state and federal field office levels because of an increased use of EISs or EAs over the simpler, more cost-effective CEs. The agencies need guidance aimed at reducing the number of EISs and EAs prepared.

One way to accomplish this would be through increased use of programmatic NEPA documentation. Many issues common among resource development activities could be assessed programmatically, in the context of Federal land managers' Forest Plans or Land and Resource Management Plans. A few examples include: identification of mining districts; the inclusion of wind generation resource monitoring; basic mine closure techniques, etc.

Institute specific timelines for CEs to be completed.

Structure and focus should be added to the process by setting a specific timeframe by which a CE process must be completed. A decision memorandum should be provided within a reasonable, but specific, period of time. If the decision memorandum is not issued within the designated timeframe, the CE process should be deemed complete.

Assure that input from affected entities is given proper weight.

The CE process requires that a lead federal agency consider interested and affected agencies, organizations and individuals. NWMA believes that public input is integral and that agencies need to give more consideration to those comments from local, state and regional entities that will actually be affected by a decision. NWMA encourages CEQ to assure that federal agencies are better equipped to mitigate skewed comments resulting from organized letter writing campaigns by focusing more on quality and substance of the comments, rather than their quantity.

Clarify Meaning of Cumulative Impacts

NWMA recognizes the importance of adding a provision to NEPA that would establish that an agency's assessment of existing environmental conditions would serve as the methodology to account for past actions.

Clarify which types of future actions are appropriate for cumulative impact analysis.

CEQ should prepare regulations that would modify the existing language in 40 CFR 1508.7 to focus analysis of future impacts on concrete proposed actions rather than actions that are “reasonably foreseeable.”

Conclusion:

NWMA appreciates the opportunity to provide these comments to CEQ. We look forward to assisting the CEQ in its continuing efforts to update and improve the NEPA process. If we or our members can be of assistance in providing more information, we would welcome the opportunity.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Skaer".

Laura Skaer
Executive Director